

Legal Department  
2301 Market Street / S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

October 20, 2017

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

**RE: Thomas Baker v. PECO Energy Company**  
**PUC Docket No.: C-2016-2573166**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *Reply Exceptions of PECO Energy Company*.

Very truly yours,



Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab  
Enclosure



## REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Thomas Baker (“Complainant”) in the above-referenced matter on October 10, 2017. On or about October 29, 2015, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant claims that a PECO technician went to his tanning salon and yelled “fire” scaring his customers. Complainant claims that he lost customers and requests reimbursement for lost business. Respondent, PECO filed an Answer on November 17, 2016, averring that the company sent a technician to the premises to respond to a high temperature alarm. PECO denied the technician yelled fire. A hearing was held before Administrative Law Judge Christopher Pell (“ALJ Pell”) on April 27, 2017. At the hearing PECO presented fourteen (14) exhibits and four witnesses. ALJ Pell issued an Initial Decision on August 23, 2017, wherein he held *inter alia*:

1. That the Complaint of Thomas Baker against PECO Energy Company at Docket No. C-2016-2573166 is denied.

The Commission should sustain the Initial Decision of ALJ Pell. Complainant excepts to the decision issued by ALJ Pell because he wants to re-litigate his dispute through his Exceptions. Specifically, Complainant excepts to ALJ Pell’s decision because he claims the following:

**I. Complainant failed to submit late-filed exhibits of his ledgers to prove his business suffered financial losses.**

During the hearing, the Complainant testified that his tanning salon sustained losses after PECO’s technician allegedly yelled “fire” and the police arrived at his business. The Complainant attempted to submit bank statements to show that his revenue reduced after the incident. PECO objected and stated that bank statements are not proof of revenue reduction, but

rather, company ledgers and accounting records demonstrating there was a reduction in sales receipt was better proof. Tr. 27-35. ALJ Pell gave the Complainant until Friday, May 12, 2017, to submit copies of his ledger as a late filed exhibit. Tr. 36. PECO never received the Complainant's late filed exhibit and ALJ Pell did not receive it. The Complainant has not provided proof that he sent his ledgers, i.e., a facsimile transmission, email, etc. But the testimony of record reflects that the Complainant did not sustain losses as a result of the event. For instance, the Complainant's customer (Ms. Madgin) testified that "if I had any problems, I wouldn't be here today. And I enjoy tanning there. And I enjoy the family atmosphere that they bring to the neighborhood." Tr. 99. Plus, the Complainant testified that he eventually got his customers back. Tr. 27. Accordingly, the Complainant has not proved he has any losses and his exceptions should be denied.

## **II. PECO's technician provided identification.**

In his Exceptions, the Complainant refutes ALJ Pell's finding of fact that PECO technician, Michael Brignola and Mr. McGinnis provided identification when the Complainant requested it. The Complainant states that Mr. Brignola did not produce his identification and "while he was on the phone he said he didn't have to because was in uniform." The Complainant claims the first time PECO 's technicians showed identification was when he "asked the police to make them show I.D."

Mr. Brignola, who has been employed with PECO for 46 years, testified that initially the Complainant's counterperson, "Noel" did not ask him for identification. Tr. 154. But then when he was asked, he did show identification. Tr. 177. Additionally, both Mr. Brignola and Mr. McGinnis were wearing a PECO uniform at the time of the visit and to the Complainant "they

looked like PECO.” Tr. 22-23; Tr. 45. The counterperson, Noel, testified that the technicians were wearing PECO uniforms. Tr. 73. The Complainant also noted that Mr. Brignola and Mr. McGinnis had arrived in a PECO truck. Tr. 46. Despite this, the Complainant still disputes that PECO’s technicians did not show identification. The Complainant has a credibility issue in this regard. Therefore, his exceptions should be denied.

**III. PECO’s technicians correctly advised the Complainant they were there to check the meters.**

In the Complainant’s exceptions, he claims when PECO’s technicians arrived, they stated they were there to turn off the electricity, not check the meter. Specifically, the Complainant states “When they arrived they said they were turning off the electric, not that they wanted to check the meter.” The Complainant also states that Mr. Brignola “said he was there to shut off the electric because it was going to cause a fire.” The Complainant’s own testimony and the testimony from his witness refutes the Complainant’s claim.

For instance, the Complainant testified regarding PECO’s technicians: “*They wanted to check the meter.*” Tr. 43. The Complainant testified that the technicians explained in detail “they get the alarm. They have to come out and check it out. And that’s what was going on.” Tr. 50. The Complainant’s counter person (Noel Wilczaa) testified the PECO technicians said “they were there to check the meters, because they felt as though --- that by the reading of the meter it was a possible fire to occur.” Tr. 85. The record reflects that PECO advised the Complainant and his employee they were at the tanning salon to check the meter – not shut off the service. Clearly, the Complainant’s own testimony and the testimony of his witness supports dismissal of this Exception.

**IV. PECO's technicians never announced to the salon customers, there was going to be a fire – the Complainant's employee Noel did.**

The Complainant contends that PECO's technician, Michael Brignola, announced to his employee and his clients there was going to be a fire after he was not granted access to the meters. The testimony of record refutes this assertion.

Mr. Brignola testified that he tried to instill to the Complainant's employee (Noel) the sense of urgency to access PECO's equipment but at no time did he announce there was going to be a fire. Tr. 160. The second day Mr. Brignola arrived at the premises, he did not say anything about a fire. Tr. 175. Mr. Brignola testified "There's no way I would mention (fire) in front of everybody." Tr. 178. Mr. Brignola said "there was no way I was going to mention fire in mixed company." Tr. 179. In fact, Mr. Brignola only discussed the issue of a potential fire with the Complainant. Mr. Brignola first discussed with the Complainant on the telephone there was a possibility of a fire. Tr. 188. Mr. Brignola then discussed with the Complainant that there was an alarm and the meter may be getting hot in the back yard at the meter. But "there were no residents around or anything. There's no customers at that point." Tr. 182. The Complainant's witness, employee Michael Vasos, confirmed that he, the Complainant and Mr. Brignola were standing in the back yard when Mr. Brignola explained the procedure and the potential that a fire could happen. Tr. 119.

The Complainant does not know for a fact whether Mr. Brignola announced fire to his customers because he was not at the premises and did not hear it. Tr. 20-21. Indeed, the record reflects that the Complainant's employee (Noel) was hollering "fire" and knocking on the tanning salon doors to customers because she wanted everyone out. Tr. 93. The Complainant's customer, Elizabeth Madgin, testified that she did not hear PECO yell fire. Tr. 92; Tr. 98.

However, she heard Noel hollering “fire” and Ms. Madgin’s daughter hollered fire so she came out of the tanning salon room. Tr. 93-94.

The Complainant did not present one customer or employee (except for Noel) who was willing to testify that they heard PECO yell fire. So, the only person who heard PECO allegedly yell fire was Noel, and the Complainant’s daughter, Danielle Baker, testified that “Noel is completely crazy.” Tr. 123. Consequently, the Complainant was not there to hear PECO yell fire. The employee Michael Vasos was not there to hear PECO yell fire. The customer, Elizabeth Madgin did not hear PECO yell fire – she only heard Noel yelling fire and she seemed “upset”. Tr. 96. And, Danielle Baker did not hear PECO yell fire – she just saw Noel “completely crazy.” Clearly, Noel was told that PECO needed to get to the meter because there was the possibility of fire. She panicked and yelled it to all of the customers – not PECO. Accordingly, the Complainant’s Exceptions should be denied.

**V. PECO’s technicians never asked the tanning salon customers to wait outside of the building.**

In his Exceptions, the Complainant disputes ALJ Pell’s finding of fact number 20 and claims that it is a “total outright lie” that PECO did not tell any of his customers to wait outside the building. The record testimony reflects that it was the Complainant’s employee who asked everyone to leave – not PECO.

The Complainant’s witness, Noel, testified that there was a lot of chaos and fear and the customers walked outside. Tr. 74. When asked whether PECO’s technicians announced to the customers they should leave, Noel said “No.” “They didn’t announce that.” Tr. 87. The testimony from the Complainant’s witnesses, Ms. Madgin (a customer) and Danielle Baker (the Complainant’s daughter) reflect the fact that it was Noel who was yelling fire and asking

everyone to leave the building. Tr. 93-94; Tr. 23. The record evidence demonstrates that Complainant's employee, Noel, caused the chaos and fear by yelling fire and asking everyone to leave. There is no evidence in the record demonstrating that PECO's personnel asked any customer to leave the building. Accordingly, the Complainant's Exceptions should be denied.

**VI. PECO's technician never stated that PECO's meter was a problem.**

In his Exceptions, the Complainant claims that PECO told him and his co-worker that PECO's meters "were crap and causing lots of problems in [the] area." That is incorrect. Mr. Brignola testified that it was his first time responding to the specific meter at issue which fits into a large 320 meter service board. Tr. 173. He did not say to the Complainant that PECO was having problems with these meters since it was his first time responding to this type of meter.

Tr. 172-173. Mr. Brignola testified:

Q. So you're also denying that you didn't tell --- Mic the same thing that those were faulty --- there were plenty of faulty meters in South Philly?

A. No. I would never say that, because that's not true. If there are, it's not to my knowledge. And this style meter, which is pretty much just endemic to your large 328 meter board installation, it's the first one of that meter I've dealt with in --- in a large situation.

Tr. 192.

The Complainant's witness, Michael Vasos, testified that PECO replaced the meter and there has not been a problem since. Tr. 113. Accordingly, the Complainant's Exceptions should be denied.

## **VII. Conclusion**

For the reasons set forth above, PECO respectfully requests that the Commission deny the Complainant's Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Direct Dial: 215.841.6841  
Fax: 215.568.3389



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**THOMAS BAKER**

**COMPLAINANT**

**v.**

**PECO ENERGY COMPANY,**

**RESPONDENT**

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**Docket No. C-2016-2573166**

**CERTIFICATE OF SERVICE**

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Thomas Baker  
2525 South Broad Street, First Floor  
Philadelphia, PA 19148**

Dated at Philadelphia, Pennsylvania, October 20, 2017



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Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
Direct Dial: 215.841.6841  
Fax: 215.568.3389